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IN THE

Supreme Court of the United States

October Term, 1967

No. 550

HARLAND JAY SIMPSON,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of California.

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STATE OF CALIFORNIA,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of California.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of California, entered in the above-entitled case on May 24, 1967.

Opinions and/or Judgments Below.

On March 18, 1966, petitioner was found guilty by jury of the crime of violation of Section 148 of the California Penal Code. Judgment of conviction was entered in the Municipal Court of Ventura County, California, Fillmore Department, in the criminal action entitled The People of the State of California vs. Harland Jay Simpson on April 15, 1966 and probation was denied (Appendix A). The opinion and order of the Appellate Department of the Superior Court for the County of Ventura, State of California, affirming the

judgment of conviction and the order denying probation was entered on December 13, 1966 (Appendix B). On January 4, 1967, petitioner's application for certification of the case to the Court of Appeal, Second Appellate District, State of California, was denied by the said Appellate Department of the Superior Court for the County of Ventura, State of California (Appendix C). The order of said Court of Appeal, Second Appellate District, State of California, denying petitioner's application for writ of habeas corpus was entered without hearing on April 3, 1967 (Appendix D). The order of the California Supreme Court, denying petitioner's application for writ of habeas corpus was entered without hearing on May 24, 1967 (Appendix E).

Jurisdiction.

The jursidiction of this honorable Court is invoked under 28 United States Code, Section 1257(3), because the validity of a State statute on grounds of repugnancy to the United States Constitution is drawn into question.

Questions Presented.

1. Whether Section 148 of the Penal Code of the State of California is an unconstitutional statute *per se* in violation of due process of law under the Fourteenth Amendment to the United States Constitution because of vagueness.

2. Whether, assuming Section 148 of the Penal Code of the State of California is constitutional *per se*, the conviction of petitioner of a violation of said statute under the evidence presented in this case was in violation of the due process clause of the Fourteenth Amendment.

3. Whether the failure of the trial court to instruct the jury on all the elements necessary to prove the offense resulted in conviction of petitioner in violation of the due process clause of the Fourteenth Amendment.

4. Whether the procedure allowed by statute and rules of court for appeal from a conviction in a Municipal Court as applied to this case is in violation of the due process and equal protection clauses of the Fourteenth Amendment.

Statutes Involved.

The following statutes and rules of court are involved in this case and are set forth in Appendix F:

1. Section 148 of the California Penal Code.
2. Section 4e of Article VI, California Constitution.
3. Section 1471 of the California Penal Code.
4. Rules 61 to 69, inclusive, of the California Rules of Court.

Statement of the Case.

About 3:00 A.M., January 27, 1966, Sheriff's Deputies Willard and Maschka, while on routine patrol on Highway 126 about six miles east of Fillmore, observed a 1958 Triumph sports car approach them from the rear. The car was driven by the petitioner's wife, Wilma Simpson, and the petitioner was a passenger. They were en route to their home in Bakersfield from Santa Barbara where the wife was a student at the University of California at Santa Barbara.

The deputy sheriffs were unable to gauge the speed of the car since it was approaching them from the rear. The Triumph sports car as it came closer, swung out

to the left across the double yellow line and passed the sheriff's unit. The deputies then turned on their red light and the car pulled over and stopped shortly thereafter. Deputy Sheriff Willard walked up to the driver's side of the sports car and asked for Mrs. Simpson's driver's license, which she handed to him. At said time Mrs. Simpson asked the deputy what he wanted, and he replied, "Do you see that double yellow line, that's what I want." Deputy Sheriff Willard took the driver's license and returned to the sheriff's car, and he and Deputy Sheriff Maschka proceeded to use the two-way radio to run a records check on the car and to determine if there were any possible holds outstanding for said vehicle.

After an elapse of a few minutes, Mrs. Simpson became worried with regard to the return of her operator's license and emerged from the sports car and approached the Sheriff's car, at which time she stated to them that she did not know who they were and that to her knowledge sheriff's deputies had no authority to enforce traffic laws.

While Mrs. Simpson was having this conversation with the sheriff's deputies, the petitioner became perturbed about his wife's absence and emerged from the sports car to ascertain the cause for her delay and to ascertain what was transpiring between her and the officers. The petitioner got out of the car and approached the deputies, and Deputy Willard told him to get back into the car. The petitioner refused and inquired of the officer as to what law he was breaking and why he had to return to his car. Deputy Sheriff Willard then replied, "Because I said so." The petitioner refused to comply, and placed his hands in the side pockets of his

windbreaker jacket which he was wearing, and proceeding to walk towards his wife, and at the same time made the exclamation that "I want to see what is going on with my wife." Deputy Sheriff Willard then ordered the petitioner to remove his hands from his jacket pockets, and the petitioner refused and inquired of Deputy Sheriff Willard as to what law he was breaking and why he had to remove his hands from his jacket pockets, and continued to move towards Deputy Sheriff Willard in the direction of his wife.

At this time Deputy Sheriff Willard approached the petitioner and placed his open hands on the petitioner's chest in an apparent effort to stop the petitioner's advance and compel him to return to his car. From that moment on things happened rather quickly. Deputy Sheriff Willard testified that the petitioner grabbed his arm, and the petitioner testified that he never removed his hands from the pockets of his windbreaker jacket. Both of the deputies and the petitioner engaged in a scuffle, which ended in all three of them falling and rolling to the bottom of a two or three foot embankment adjoining the shoulder of the highway. Deputy Sheriff Willard had his knee on the petitioner's chest and Deputy Sheriff Maschka had his arms around petitioner's head and neck, but no blows were struck on either side. The petitioner offered no resistance, and he was escorted back to the highway where his hands were placed behind him and he was handcuffed, searched and placed in the deputy sheriffs' car and taken to the Ventura County Jail where he was booked and jailed.

Before taking the petitioner to jail, the deputy sheriffs issued Mrs. Simpson a traffic citation for having crossed the double yellow lines. She was not arrested.

The petitioner was charged with a violation of Section 148 of the California Penal Code, which reads as follows:

"148. Every person who wilfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment."

Petitioner was found guilty by a jury of violation of the above-quoted section.

The federal questions sought to be reviewed by this honorable Court were raised before the State courts according to the procedure provided by California law, in the following manner:

1. On April 21, 1966, petitioner filed a Notice of Appeal within the time prescribed by law to the Appellate Department of the Superior Court for the County of Ventura, from both the judgment of the trial court and the order denying probation (Appendix G). The judgment and order were both affirmed by the said Appellate Department in a written opinion (Appendix B).

2. On December 27, 1966, petitioner filed in the Appellate Department of the Superior Court for the County of Ventura, an application for certification of the case to the Court of Appeal, Second Appellate District (Appendix H). Certification was denied (Appendix C). This exhaused petitioner's appellate remedies under California law for reviewing a judgment of a Municipal Court by the appellate process.

3. On March 16, 1967, Application for Writ of Habeas Corpus was filed in the Court of Appeal, Second Appellate District, State of California (Appendix I). The application was denied without a hearing or opinion on April 3, 1967 (Appendix D).

4. On May 12, 1967, Application for Writ of Habeas Corpus was filed in the Supreme Court of the State of California (Appendix J). The application was denied without a hearing or opinion on May 24, 1967 (Appendix E).

The foregoing procedures exhausted all remedies under California law, by appeal and writ.

REASONS FOR GRANTING THE WRIT OF CERTIORARI.

The writ should be granted in this case for the reasons stated below as to each question presented hereinabove.

Question No. 1. (Constitutionality of Section 148 *per se*).

Section 148 of the California Penal Code is unconstitutional because it violates the well-established principle that a criminal statute must be plain and explicit, clearly informing men of common intelligence what acts are forbidden. A statute which forbids the doing of some act in terms so vague that men of common intelligence must necessarily be uncertain as to its meaning and differ as to its application violates the first essential of due process of law. (*Connally v. General Construction Co.*, 269 U.S. 385; *Yu Cong Eng v. Trinidad*, 271 U.S. 500). A decision of this Court on the constitutionality of Section 148 is of great importance for the reason that the case does not affect only

the petitioner, but also affects the rights of a great many other persons who are arrested each year for acts allegedly falling within the vague language of Section 148. The fact that a conviction was obtained on the evidence of the acts done in this case shows that the statute is applied by the courts to acts which constitute mere annoyance to police officers.

Question No. 2. (Constitutionality of application of Section 148 to this case).

Even if it should be determined that Section 148 is not unconstitutionally vague *per se*, the judgment in this case applying the section to the facts should be reviewed by this Court. Such cases as *Thompson v. City of Louisville*, 362 U.S. 199, and *Garner v. Louisiana*, 368 U.S. 157, make it plain that this Court will review cases in which the evidence presented at the trial falls so far short of indicating violation of a given penal statute that the conviction of the accused violates due process of law as to the single individual involved.

A study of the facts of this case demonstrates that the petitioner immediately prior to his arrest did in no way "delay and obstruct Deputies Willard and Maschka in the discharge or attempt to discharge a duty of their office" as charged, and for which he was convicted. Defendant was exercising his constitutional right to emerge from his automobile in order to witness the proceedings taking place between the officers and his wife, who was standing by the side of the sheriff's car.

After Mrs. Simpson brought her car to a stop, Deputy Sheriffs Willard and Maschka could not arrest her and take her without unnecessary delay before a magistrate within the county in which the offense is charged

in pursuance to California Vehicle Code Section 40302, by virtue of the fact that she did comply with the provisions of said section in that she immediately exhibited her driver's license, or other satisfactory evidence of her identity, and did not at any time refuse to give her written promise to appear in court. When Deputy Willard asked Mrs. Simpson for her driver's license, she immediately responded and handed it to him. He at no time prior to the arrest of her husband, the petitioner, asked her to sign a written promise to appear for the traffic violation. After obtaining possession of her driver's license, Deputy Sheriff Willard returned to the patrol car, and without having any reasonable or probable cause that Mrs. Simpson had committed a felony, spent a number of minutes in using the two-way radio to make a check on her car. His unjustified delay in keeping her driver's license in his possession while he was making the radio check caused Mrs. Simpson to become apprehensive about her driver's license, and she thereupon emerged from her car to inquire about the nature of the delay and justification of the proceedings, which she had a perfect right to do.

In view of the fact that it was 3:00 A.M. on a cold morning and his wife had not returned to her car, the defendant husband emerged from the vehicle solely for the purpose of ascertaining what was happening to his wife with regard to her traffic violation for having crossed the yellow double lines on the highway. There was no evidence presented whatever that the defendant intended to create a disturbance, take any aggressive action whatever towards the law enforcement officers, or create a breach of the peace, but that he emerged solely for the purpose of determining what was happening to his wife who had not returned to her car.

This conduct on the part of the defendant can in no way be construed as wilfully resjsting, delaying or obstructing a public officer in the official discharge or attempt to discharge his duties.

The crime described in Section 148 of the California Penal Code had four distinct elements: (a) wilfulness; (b) resistance, delay or obstruction; (c) a public officer; and (d) some official duty which the officer is then discharging or attempting to discharge. It was emphasized in the case of *People v. Perry*, 79 Cal. App. 2d Supp. 906, that the prosecution has the burden of proof on all four elements of the offense. In the instant case, the evidence failed to prove either (a) or (b).

Wharton's Criminal Law and Procedure, Vol. 3, p. 634, states the law to be that "merely remonstrating with an officer in behalf of another, or criticizing an officer while he is performing his duty, does not amount to obstructing, hindering, or intefering with an officer." The most that could be said with regard to the conduct of the petitioner in the instant case is that while lawfully attempting to witness the proceedings taking place between his wife and the two deputy sheriffs, he emerged from his car and thereafter a discussion took place between him and the officers. He had a lawful right to inquire as to why he was being commanded to return to his car and not permitted to witness the proceedings, and the only justification to the officer's command that he return to his car was the exclamation "because I said so." Petitioner was then subjected to forcible pushing activity by the officer, which he had no right to do, and the petitioner may then have resisted the forcible efforts to make him return to his

car. The officers were not then attempting to make an arrest of either the petitioner or of his wife.

The evidence at the trial is uncontroverted that at the time Officer Willard commenced to push petitioner back towards or into his car that he exhibited no words or act of belligerency, that his wife had not been placed under arrest and had not refused to sign her written promise to appear, but that the petitioner emerged from his car solely for the peaceful purpose of ascertaining the nature of the proceedings being had between her and the two deputy sheriffs.

Question No. 3. (Erroneous Jury Instructions).

The trial court was under a duty to fully and properly instruct the jury with regard to the law applicable to the facts of the case. The court erred prejudically in failing to give petitioner's requested instruction on circumstantial evidence (CALJIC No. 26) because the case did in fact rest in part on circumstantial evidence by virtue of the fact that any number of circumstances surrounding the occurrence immediately prior to the arrest of the petitioner were circumstantial in nature and warranted the giving of the requested instruction.

This error, when combined with the giving of instructions offered by the prosecution that "conduct which in any manner impedes, hinders, interrupts, prevents or delays a lawful arrest" can be a violation of the statute involved, was an incorrect application of the statute in view of the fact that neither the petitioner nor his wife were being arrested when the altercation occurred. The case of *Garner v. Louisiana, supra,* creates a constitutional requirement that vague statutes, if to be upheld at all, must be given a reasonable application consistent with due process.

Question No. 4. (Discriminatory Appellate Procedure).

In 1960, the people of the State of California adopted an amendment to the California Constitution consisting of Section 4e of Article VI thereof, which provides that the District Courts of Appeal shall have appellate jurisdiction of cases within the original jurisdiction of the Municipal and Justice Courts, to the extent and in the manner provided by law (Appendix F). The Legislature subsequently enacted Section 1471 of the California Penal Code, which provides that the District Courts of Appeal may order a case transferred as provided by rules of the Judicial Council, when a Superior Court certifies, or the District Court of Appeal determines, that such transfer appears necessary to secure uniformity of decision or to settle important questions of law (Appendix B). The Judicial Council has promulgated Rules 61 to 69, inclusive, of the California Rules of Court, which establish the mechanics of the appeal procedure (Appendix B). The operation of the California system for appellate review of Municipal Court judgments is described in 15 Hastings Law Journal 11. The emphasis is on civil cases, but the procedure is essentially similar in criminal cases.

The selective and discretionary appeal procedure which has resulted from the combination of statutory law and court rules has brought about a system whereby a defendant charged with a crime which happens to fall within the original jurisdiction of the Superior Court has one method of review of his case and a de-

fendant who is unfortunate enough to be accused of a crime of lesser degree falling within the jurisdiction of a Municipal Court has quite another, and more limited, opportunity for review. The distinction between these types of crime is based on the arbitrary foundation of whether the penalty fixed is a county jail or a state prison sentence.

While it is true that procedural due process and equal protection of the laws under the United States Constitution does no require that there be a right to appeal or review of all cases, the Constitution does protect those charged with crime from discrimination by the establishement of arbitrary classifications or categories of crimes or criminal cases for the purposes of appeal. (*Cole v. Arkansas,* 333 U.S. 196; *Griffin v. Illinois,* 351 U.S. 12). When a state chooses to establish an appellate review system in criminal law, it may not, consistently with the federal constitution, foreclose some categories of accused persons from the right to the same procedure for review that is afforded others in essentially similar positions for reasons having no relation to a rational policy of criminal appeal. (*Burns v. Ohio,* 360 U.S. 252; *Griffin v. Illinois, supra*).

In the instant case the petitioner has been foreclosed from the guaranteed hearing by the normal appellate procedure he would have been able to follow if his case had fallen within the jurisdiction of the Superior Court. He has been required to follow a writ procedure resulting in his case being handled in an en-

tirely different manner which allowed denial of relief without either hearing or opinion in the higher appellate courts of the State. The procedure he has been forced to follow is arbitrary and carpricious and not based on a rational and constitutional differentiation of classes.

Conclusion.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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